IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
APPELLATE CIVIL JURISDICTION

FIRST APPEAL NO.991 OF 1984

Ebrahim Hussain Thakur ...Appellant(orig.Defdt.)
Vs.
Smt. Aziza Ebrahim Thakur ...Respondent(orig.Pltf.)

Ms. Shakuntala Mudbidri for Appelant
Mr. M.L. Patil with Shilpa R. Mangle for Respondent No.2

CORAM: SMT. ROSHAN DALVI, J.
DATED: 12TH APRIL, 2007

P.C.

1. The appellant is the husband of the original respondent No.1, since deceased. The original Respondent No.1 filed a suit against the appellant for recovery and possession of the suit premises. It was her case that she expended monies to acquire the premises on tenancy. The appellant and respondent no.1 were married in 1949 and divorced in October, 1968. The Appellant claims that he remarried her on 1st December, 1968. The premises is taken to have been acquired by Respondent No.1, the original Plaintiff, in November, 1968, i.e, during the period whilst she was divorced. It has been her case that after acquisition of the

premises the appellant gained entry into her premises on the pretext that he would behave well etc, and has thereafter dis-possessed her, constraining her to sue for recovery of the possession of the premises tenanted by her in her name. The suit was valued at Rs.1800/- for the premises.

2. The respondent no.1 is the original plaintiff, also sued for recovery of certain articles including certain ornaments, sarees, pots and pans. The suit was initially valued at Rs.1000/- for the movables.

3. It was the appellant's defence in the suit that he acquired the premises in 1968. That agreement is not proved. The landlord has not been examined. It is his further case that after acquiring the premises himself, he approached the landlord to issue the rent receipts in the name of his wife, the first respondent by his letter dated 4th December, 1968 i.e, soon after his remarriage. He claims that in those circumstances respondent no.1 claimed title and sought possession. He went to the landlord for the purpose of the issue of the rent receipts along with his Advocate, who has also not been examined by him.

4. It was his further case that his wife had no money and therefore, she could not purchase the premises or have any

movables. He accordingly disputed her claim to the movables also.

5. The suit therefore, was for both movable as well as immovable properties claimed by respondent no.1, the wife of the appellant.

6. The learned trial Judge framed two specific issues relating to whether the appellant proved that the tenancy was taken benami in the name of his wife, and whether the wife, respondent no.1 proved that the articles she claimed belonged to her.

7. The main evidence adduced in the case, aside from that of the parties to the lis, was that of one other person P.W.3 who is shown to have accompanied the wife to remove amounts from her post office account for acquiring the suit premises on tenancy.

8. The learned Judge has gone on the basis of admitted and established facts and on the basis of documents. Both the parties to the lis prevaricated and hence have not been completely believed.

9. Seeing the admitted facts with regard to the acquisition

of tenancy in the name of the wife and the time during which it was acquired, being when she was admittedly divorced, the learned Judge has correctly considered that she required to make some arrangement for her residence, and hence, acquired the premises. The supporting evidence of P.W.3 showing that he had accompanied her to the post office was considered.

10. The learned Judge further considered the fact that though the defendant alleged that he had acquired the tenancy, he has not proved it. Since the agreement relied upon by him was not proved, the landlord not having been examined, the learned Judge has correctly concluded that the Appellant did not prove his case. The lack of title of the defendant/husband has been therefore, correctly seen. The judgment with regard to the immovable property has been correctly considered in the impugned order.

11. It is contended on behalf of the appellant that because both of them claimed title by tenancy, the Civil Court has no inherent jurisdiction. That contention is entirely misconceived. The suit was for the recovery of possession on title. The suit is therefore, filed under Section 5 of the Specific Relief Act. The plaintiff is required to prove his title and claim possession from the party in possession. The suit

is not between the landlord and tenant. The provisions of the Bombay Rent Act 1947, which was in force at that time do not apply.

12. With regard to the claim of movables the learned Judge has considered the evidence in four parts. The movables were mentioned in schedule--B to the plaint. A general case of the plaintiff that most of the articles were given to her at the time of her marriage and were acquired by her by gift has been later diluted by her admission that some of the articles were not gifted at the time of her marriage. The learned Judge has considered a lending certificate produced at Exhibit-4 by the appellant (original defendant) and not granted the wife's claim with regard to those articles. He has also considered the evidence insufficient for grant to her of the pots and pans and such other miscellaneous articles.

13. The learned Judge has considered a report of the Court Commissioner who was the Court Receiver's representative sent to make an inventory of ornaments and sarees. It is only that claim which has been to be of the ownership of the plaintiff/wife. The learned Judge has considered that after making the inventory, those articles were not handed over to the plaintiff and hence, they continued in the control of the defendant (appellant). One godrej almirah(cupboard) was

found locked. The plaintiff contended that she never received her ornaments and the defendant did not contend that he handed over ornaments to his wife. His contention is that the ornaments belong to him was not proved and hence, to that extent the ownership of the ornaments and sarees by the wife was taken to have been proved. The learned Judge considered " the revised valuation clause" and valued the articles at Rs.40,000/- .

14. The impugned judgment is dated 28th February, 1984, this appeal has been filed in the year 1984. Pending the appeal respondent no.1, (original plaintiff) expired. The appellant took out a civil application for bringing his daughter as the heir of the original first respondent on record in 1997. That application was not pursued. The application taken out in 1997 (as can be seen from the typed year 1997 in its title) came to be numbered in 2006. It is not shown to be served upon the daughter who has sought to be made as opponent. It was not prosecuted. The appellant did not appear in Court. By an order dated 1st December, 2006 that application came to be dismissed. The appeal against respondent no.1 has accordingly abated. Nevertheless, since, it has been argued, the case of the appellant on merits has been considered. There is no merit in his case against respondent no.1.

15. Respondent no.2 is stated to have been inducted in the suit premises by respondent no.1. Respondent no.2 claims a separate title directly from the landlord. He has produced his rent receipts from 1st November, 1984, soon after this appeal was filed. There is nothing to show that he was inducted by the respondent no.1 as stated by the appellant. He was not party to the original suit. The appeal against him is entirely misconceived. Accordingly the appeal is dismissed.

16. The impugned judgment dated 28th February, 1984 is confirmed. Respondent No.2, as the Court Receiver's agent has made payment of royalty. The Court Receiver is discharged without passing accounts and on payment of his costs, charges and expenses from the amounts paid by Respondent No.2.

17. The respondent no.2 shall be entitled to continue in possession of the suit premises in his independent capacity. From the amount paid to the Court Receiver if any amount remains after deduction of his costs, charges and expenses, it shall be handed over to the respondent no.2.

18. This order is stayed for 8 weeks.

(SMT.ROSHAN DALVI, J.)